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ATTORNEY FOR APPELLEE:

ALEXANDRA D. A. THOMAS

Indiana Department of Child Services
Crawfordsville, Indiana

IN THE MATTER OF:

M.H., J.H. and J.H.,

CHILDREN IN NEED OF SERVICES,

Appellants-Respondents,

VS.

MARION COUNTY DEPARTMENT
OF CHILD SERVICES,

Appellee-Petitioner.

[illegible]

No. 49A02-0804-JV-338

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Marilyn A. Moores, Judge

Cause Nos. 49D09-0707-JC-27645, 49D09-0707-JC-27646 and 49D09-0707-JC-27647

October 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Marquise Hornes (“Mother”) appeals the juvenile court’s determination that her minor children M.H., J.H., and Jaq.H. are children in need of services (“CHINS”). Mother presents a single issue for our review on appeal, namely, whether the evidence is sufficient to support the CHINS determinations.

We affirm in part and reverse in part.

FACTS AND PROCEDURAL HISTORY

On March 8, 2007, the Marion County Department of Child Services (“DCS”) received a report that J.H., age seven and wearing only underwear and socks, was found outside of his home in thirty-four-degree weather. A family case manager investigated the incident, and Mother signed a Safety Plan and an Informal Adjustment, which put into place home-based counseling. However, Mother was subsequently arrested for child neglect, the court issued a no-contact order, and all three children were placed with a relative. The State ultimately dropped the charge against Mother and vacated the no-contact order.

Mother returned home, but the children continued to live with a relative, and DCS had filed a petition alleging that the children were CHINS. Mother did not fully cooperate with the services ordered by DCS. She was disruptive during meetings with the family case manager, and she missed visitation with the children. In addition, Mother did not complete a parenting assessment. Still, DCS returned J.H. and Jaq.H. to Mother’s care, but M.H. continued to live with Mother’s cousin.

Pending the factfinding hearing on the CHINS petition, DCS ordered additional services for Mother, including home-based counseling. Mother did well with that counseling, and, at the time of the factfinding hearing, M.H. testified that she wanted to return to Mother's home. However, the juvenile court determined that the children were CHINS and ordered continuing participation in home-based counseling. The court also ordered in-home visitation between Mother and M.H. This appeal ensued.

DISCUSSION AND DECISION

Indiana Code Section 31-34-1-1 provides that a child under eighteen years old is a CHINS if:

- (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and;
- (2) the child needs care, treatment or rehabilitation that the child:
 - (A) is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

DCS has the burden of proving by a preponderance of the evidence that J.H., Jaq.H., and M.H. are CHINS. See Ind. Code § 31-34-12-3. When reviewing the sufficiency of evidence, we consider only the evidence most favorable to the judgment and the reasonable inferences flowing therefrom. Hallberg v. Hendricks County Office of Family & Children, 662 N.E.2d 639, 646 (Ind. Ct. App. 1996). We will not reweigh the evidence or judge the credibility of witnesses. Id.

The trial court entered findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A). We may not set aside the findings or judgment unless they are clearly

erroneous. Ind. Trial R. 52(A); Menard, Inc. v. Dage-MTI, Inc., 726 N.E.2d 1206, 1210 (Ind. 2000). In our review, we first consider whether the evidence supports the factual findings. Menard, 726 N.E.2d at 1210. Second, we consider whether the findings support the judgment. Id. “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous if it relies on an incorrect legal standard. Menard, 726 N.E.2d at 1210. We give due regard to the trial court’s ability to assess the credibility of witnesses. Ind. Trial R. 52(A). While we defer substantially to findings of fact, we do not do so to conclusions of law. Menard, 726 N.E.2d at 1210. We do not reweigh the evidence; rather we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. Yoon v. Yoon, 711 N.E.2d 1265, 1268 (Ind. 1999).

Here, Mother argues that the evidence is insufficient to support the CHINS determination. In particular, she maintains that the evidence shows that she was “cooperating and complying with the home[-]based counselors and classes, and that no further treatment was required for the family.” Brief of Appellant at 9. And she contends that the conditions that led to the CHINS petition being filed no longer exist.

Karen Butterworth, who served as family case manager until September 2007, testified that Mother had a history of physically abusing the children and was generally uncooperative with DCS. Tim Beals, who has served as family case manager since September 2007, testified that he recommends that Mother continue with home-based counseling, attend anger management classes, and undergo a psychological evaluation.

And he testified that he would have concerns about M.H.'s safety if she were returned to Mother's home. But Beals also testified that he has "no concerns" about the safety of J.H. and Jaq.H. while residing with Mother. Transcript at 36. He described J.H. and Jaq.H. as "[a]dapting well to [Mother's] home." Id. at 35. Further, Ann Robison, a home-based counselor assigned to this case, testified that Mother's parenting skills are good. And Robison testified that Mother "has completed all of the goals that we had established for her." Id. at 78.

We conclude that the evidence supports the juvenile court's determination with respect to M.H. Mother's contention on appeal with respect to M.H. amounts to a request that we reweigh the evidence, which we will not do. But we agree with Mother that the evidence is insufficient to show that J.H. and Jaq.H. are CHINS. There is no evidence showing that the physical or mental condition of either J.H. or Jaq.H. is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of Mother to supply them with necessary food, clothing, shelter, medical care, education, or supervision. See I.C. § 31-34-1-1. We affirm the juvenile court's CHINS determination with respect to M.H., but we reverse the court's CHINS determinations with respect to J.H. and Jaq.H.

Affirmed in part, reversed in part.

ROBB, J., and MAY, J., concur.